

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Classical Stone Works, Inc. d/b/a Gothic Stone Masonry and Bricklayers and Allied Craftworkers Local 1 of PA/DE.** Case 4–CA–31409

September 30, 2003

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND WALSH

On July 31, 2003, the National Labor Relations Board issued a Decision and Order<sup>1</sup> granting the General Counsel's motion for default judgment and finding, inter alia, that the Respondent had violated Section 8(a)(3) and (1) of the Act by refusing to consider for hire or hire applicants Frederick Cosenza and Bernard Griggs about April 29, 2002. However, consistent with *Jet Electric Co.*, 334 NLRB 1059 (2001), supplemental decision 338 NLRB No. 77 (2002), the Board held in abeyance a final determination of the appropriate remedy pending a hearing or amended complaint and renewed motion for default judgment addressing the limited issue of the number of openings that were available to the discriminatee applicants under *FES*, 331 NLRB 9 (2000), supplemental decision 333 NLRB 66 (2001), enfd. 301 F.3d 83 (3d Cir. 2002).

Thereafter, on August 5, 2003, the Regional Director for Region 4 issued an amendment to complaint alleging that on or about April 29, 2002, the Respondent had no fewer than two job openings available for applicants Cosenza and Griggs. The Respondent failed to file an answer to the amendment to complaint.

Accordingly, on September 3, 2003, the General Counsel filed a renewed Motion for Default Judgment with the Board. On September 9, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the amendment to complaint af-

firmatively stated that unless an answer was filed by August 19, 2003, all the allegations therein would be considered true. Further, the undisputed allegations in the renewed motion disclose that the Region, by letter dated August 8, 2003, notified the Respondent that unless an answer was received by August 19, 2003, a renewed Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer,<sup>2</sup> we grant the General Counsel's renewed Motion for Default Judgment with respect to the allegations in the amendment to the complaint.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

Consistent with the allegations in the amendment to complaint, which have effectively been admitted by Respondent's failure to file an answer, we find that, on or about April 29, 2002, the Respondent had no fewer than two job openings available for employee-applicants Frederick Cosenza and Bernard Griggs.

**REMEDY**

Having found that the Respondent had at least two job openings available for applicants Frederick Cosenza and Bernard Griggs at the time Respondent refused to consider for hire or hire them, we find that an instatement and make-whole remedy is appropriate. Accordingly, we reaffirm the Order in the Board's earlier decision as modified to require the Respondent to offer Cosenza and Griggs instatement to positions for which they applied, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them. We shall further order the Respondent to make Cosenza and Griggs whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful discrimination against them. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

**ORDER**

The National Labor Relations Board orders that the Respondent, Classical Stone Works, Inc. d/b/a Gothic

<sup>1</sup> 339 NLRB No. 116 (2003).

<sup>2</sup> Copies of the amendment to complaint and the August 8 letter were served on the Respondent by certified mail and by hand delivery. According to the uncontroverted allegations in the Motion for Default Judgment, the copy of the amendment to complaint sent by certified mail was returned as unclaimed. The Respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Gothic Stone Masonry*, supra, 339 NLRB No. 116, slip op. at 1 fn. 2; *I.C.E. Electric, Inc.*, 339 NLRB No. 36, slip op. at 1 fn. 2 (2003), and cases cited there.

Stone Masonry, West Chester, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employee-applicants that they have been dishonest by failing to disclose that they are union organizers, that being union organizers presents a big problem, and that Respondent would not be hiring any union organizers.

(b) Refusing to consider for hire or hire employee-applicants because they announce their intentions to engage in union organizing activities once they commence employment with the Respondent, or to discourage employees from engaging in such activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Frederick Cosenza and Bernard Griggs instatement to positions for which they applied, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them.

(b) Make Frederick Cosenza and Bernard Griggs whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful discrimination against them, with interest, as set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful refusal to consider for hire or hire Frederick Cosenza and Bernard Griggs, and within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in West Chester, Pennsylvania, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the no-

tice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 29, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 2003

---

Robert J. Battista, Chairman

---

Wilma B. Liebman, Member

---

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judge

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose not to engage in any of these protected activities.

WE WILL NOT tell employee-applicants that they have been dishonest by failing to disclose that they are union organizers, that being union organizers presents a big problem, and that we would not be hiring any union organizers.

WE WILL NOT refuse to consider for hire or hire employee-applicants because they announce their intentions to engage in union organizing activity, or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Frederick Cosenza and Bernard Griggs in-statement to positions for which they applied, or if those positions no longer exist, to substantially equivalent posi-

tions, without prejudice to their seniority or any other rights or privileges they would have enjoyed absent the discrimination against them.

WE WILL make Frederick Cosenza and Bernard Griggs whole for any loss of earnings and other benefits suffered as a result of our unlawful discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful refusal to consider for hire or hire Frederick Cosenza and Bernard Griggs, and WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

CLASSICAL STONE WORKS, INC. D/B/A  
GOTHIC STONE MASONRY